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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 1126

SAM NICK FARINELLA and
WILLIAM JOSEPH DARA,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MILTON E. GRUSMARK and
NATALIE BASKIN
Attorneys for Petitioners
1674 Meridian Avenue
Miami Beach, Florida 33139

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UNITED STATES OF AMERICA,

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners SAM NICK FARINELLA and WILLIAM JOSEPH DARA pray that a writ of certiorari issue to review the opinion of the United States Court of Appeals, Fifth Circuit, dated January 13, 1969 and the Order denying Petition for Rehearing dated February 6, 1969.

OPINIONS BELOW

The Judgments of the United States District Court for the Southern District of Florida were filed on August 16, 1967. Sentences were entered on August 16, 1967. (App. B)

The decision of the United States Court of Appeals for the Fifth Circuit was entered on January 13, 1969 (App. C). Petition for Rehearing was denied on February 6, 1969. (App. D, E). Motion for Stay of Mandate was granted to and including March 8, 1969. (App. F)

JURISDICTION

The jurisdiction of this Court is invoked under Title 28 U.S.C. Section 1254(1).

Jurisdiction is also invoked under Rule 19(1)(b) of the Rules of the Supreme Court of the United States adopted June 12, 1967, effective October 2, 1967, because a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter or has decided a federal question in a way in conflict with applicable decisions of this Court, and has decided an important question of federal law which has not been, but should be, settled by this Court.

QUESTIONS PRESENTED

I

IS THE HOBBS ACT, 18 U.S.C.A. 1951, VIOLATED BY ROBBERY OCCURRING AFTER THE MOVEMENT OF ARTICLES IN COMMERCE HAS TERMINATED?

II

CAN ATTEMPTED EXTORTION AFFECT COMMERCE SUFFICIENTLY TO VIOLATE THE HOBBS ACT?

CONSTITUTIONAL, STATUTORY AND RULES PROVISIONS INVOLVED

Title 28 U.S.C. Section 1254(1)

> "By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;"

Rule 19(1)(b) Rules of Supreme Court of the United States

> "Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."

18 U.S.C.A. 1951(a)(b)

> "Interference with commerce by threats or violence

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section—

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family, or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between

points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction."

STATEMENT OF THE CASE

Defendants FARINELLA and DARA were indicted along with Defendants Anthony Esperti, Ralph Ray Goodman and Charles James Delmonico for violations of 18 U.S.C.A. 1951. Defendants FARINELLA and DARA were charged in five counts. (App. A).

Count I charged a conspiracy among all the Defendants to obstruct commerce by robbery and extortion.

Count II charged Defendants Esperti, FARINELLA and DARA with obstructing commerce by robbery of $2,000 on or about September 13, 1966.

Count III charged Defendants Esperti, FARINELLA and DARA with obstructing commerce by attempted extortion of $25,000 on or about September 13, 1966.

Count IV charged all five Defendants with obstructing commerce on or about September 14, 1966, by robbery of $2,000.

Count V charged all five defendants with obstructing commerce by extortion of $25,000 on or about September 14, 1966.

The Defendants were tried together. The Court ruled that objections by any defense counsel applied for all Defendants. The jury returned verdicts of guilty against

Defendants FARINELLA and DARA on Counts II and III, acquitting them of Counts I, IV and V. The Court entered an adjudication of guilt and ordered presentence investigation. (T. 1112) Defendant FARINELLA received concurrent sentences of 10 years imprisonment. Defendant DARA was sentenced to 7½ years imprisonment by concurrent sentences. Defendants FARINELLA and DARA appealed to the United States Court of Appeals for the Fifth Circuit. The Court affirmed the decision of the lower court (App. C) and denied Petition for Rehearing (App. D, E).

The facts giving rise to this case disclose that Defendants FARINELLA and DARA were found guilty of the charges alleged in Counts II and III of the indictment based on testimony comprising a small portion of the trial.

Jack Maloney and Joe Yeager were sharers of the profits, although not stockholders, of the Red Ball Merchandising Corporation in Hialeah, Florida. Red Ball Merchandising Corporation was a business allegedly engaged in interstate commerce through the sale of closeout merchandise.

According to the Government's witnesses, on September 13, 1966, around 4:00 P.M., Defendants FARINELLA, DARA and Esperti visited the Red Ball Merchandising Corporation. After being received by the receptionist, they proceeded to a back office with Yeager and an employee, Waldorf. Maloney, who asserted that he had been preparing a deposit, joined them shortly thereafter. Waldorf testified that Defendant FARINELLA pointed a gun at him. Maloney testified that

The foregoing facts constitute the only acts upon which Defendants FARINELLA and DARA were found guilty of Counts II and III. The remainder of the testimony constituting the majority of the trial testimony related to acts alleging conspiracy and to events which occurred the next day and later on, concerning charges of which Defendants FARINELLA and DARA were acquitted.

FEDERAL JURISDICTION

Federal jurisdiction in the first instance was based upon an alleged violation of the Hobbs Act, 18 U.S.C.A. 1951.

ARGUMENT

REASONS FOR GRANTING THE WRIT

I.

IS THE HOBBS ACT, 18 USCA 1951, VIOLATED BY ROBBERY OCCURRING AFTER THE MOVEMENT OF ARTICLES IN COMMERCE HAS TERMINATED?

No violation of the Hobbs Act results from robbery of funds occurring after movement of articles in commerce has terminated. In affirming the decision of the lower court, the United States Court of Appeals for the Fifth Circuit has decided an important question of federal law which has not been, but should be, settled by this court, and has so far departed from the accepted and

usual course of judicial proceedings as to call for an exercise of this court's power of supervision.

The Hobbs Act and its violations are to be narrowly construed. U. S. v. **Critchley**, 353 F.2d 358 (3d Cir. 1965).

In order to prove a Hobbs Act violation by robbery, it is necessary to prove both a robbery and an effect on commerce. **Stirone** v. U. S., 361 U.S. 212, 80 S.Ct. 270, 4 L.Ed.2d 252, (1960).

Robbery is defined in the Hobbs Act as:

18 USCA 1951(b)(1)

> "The term 'robbery' means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining."

In **United States** v. **Nedley**, 255 F.2d 350 (3d Cir. 1958) the Court observed that Hobbs Act definitions are copied from the New York Code and are subject to the construction of the New York penal laws by the New York courts. New York courts have construed robbery to be the unlawful taking of personal property from the person or in the presence of another, against his will,

by means of force, or violence, or fear of injury, immediate or future, to his person or property.

According to New York courts, to constitute robbery, the force or fear must be employed either to **obtain or retain** possession of the property or to overcome resistance to the taking. New York courts have ruled that intent, asportation or carrying away are elements of robbery which must be established for a conviction to stand. **U. S. v. Nedley, supra.**

In the case at bar, necessary elements of robbery were absent as far as Defendants DARA and FARINELLA were concern[illegible].

There is no testimony that either Defendant DARA or FARINELLA had any intent to steal. No testimony discloses knowledge on the part of either DARA or FARINELLA as to what was going to transpire. In fact, these defendants were acquitted of the conspiracy charge, negating any inference of awareness by them of Esperti's purpose.

The entire incident involved DARA's returning to the room with $2,000 saying "Look what I found", while Defendant FARINELLA said nothing. The money was handed to Esperti. No force or fear was used to obtain or retain the money, as required to be proved, nor was the money obtained or retained by either Defendant FARINELLA or DARA.

Ownership of the allegedly stolen funds was not established. Testimony disclosed that the money may have belonged to Red Ball or it may have belonged to Maloney,

who was not a shareholder; to avoid difficulty the Government stated in its charge that the money belonged to both the Corporation and to Maloney, but failed to prove actual ownership.

In addition to proving a robbery occurred, the Government was required to prove that commerce was affected. **Stirone v. U. S., supra.**

Maloney testified that shipments of merchandise were made following the events of September 13, 1966 (T. 240) and that the business continued in operation (T. 247) until it went into bankruptcy the following February. No testimony disclosed that commerce was in any way obstructed (T. 296). Interpreted in the manner of the present case, the Hobbs Act serves only to make any act of robbery, normally a state violation, a federal crime, contrary to the existing interpretations in other circuits requiring some effect on commerce. **United States v. Critchley,** 355 F.2d 358 (3rd Cir. 1965).

The Government alleged that Maloney was preparing a deposit slip for a $2,000 cash bank deposit received via Western Union for a sale to a Chicago customer, and the funds with which the Defendants departed represented the proceeds of a sale. If that were so, all commerce had been concluded, and any robbery occurred as a state violation and could not have affected commerce.

The appellate court held that "It is clear that the taking of $2,000 from a business engaged in interstate commerce would obstruct, delay or affect commerce." It is respectfully submitted that the articles involved, and the proceeds had concluded all interstate travel and that

therefore no effect on commerce resulted. Waldorf testified that the visit had no effect on the shipping of merchandise.

The Court erred when it charged the jury that if it inferred the Government had established a robbery, that robbery in some way or degree obstructed, delayed or affected commerce (T. 1062). Not every robbery affects commerce. Unless the charge included the requirement that the jury also had to find that Red Ball Merchandising was engaged in commerce, one of the material elements establishing jurisdiction was omitted. It is respectfully submitted that, based on the facts which indicated that all commerce had ceased and only the local proceeds were involved, the jury could have reached a different conclusion under an instruction bringing the commerce requirement to their attention.

The case at bar is distinguishable from **Battaglia v. U. S.**, 383 F.2d 303 (9th Cir. 1967). There the Court found that although a pool table had terminated its travel in interstate commerce, a Hobbs violation occurred because the wrongful act prevented use of articles after shipments. In the case at bar, no use was prevented.

II

DOES ATTEMPTED EXTORTION AFFECT COMMERCE SUFFICIENTLY TO VIOLATE THE HOBBS ACT?

Attempted extortion does not affect commerce sufficiently to violate the Hobbs Act.

Elements required to be proved in violation of the Hobbs Act by extortion include wrongful use of actual or threatened force, violence, or fear, and an effect on commerce.

Extortion is defined under the Act as:

> "The term 'extortion' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."

In **U. S. v. Kubachi**, 237 F.Supp. 638 (1965) the Court commented that in extortion cases the victim is compelled to pay for the exercise of a right or privilege already his under threat and out of fear that if he does not comply with the demands he will be subjected to unwarranted interference.

In the case at bar, no such threat was made by Defendant DARA or FARINELLA. The only statement concerning the allegedly extorted $25,000 was the statement by Esperti that "we're here to get the other $25,000 for the man in New York." That statement was made in DARA's absence, and its admission against DARA violates existing law. **Bruton v. United States**, __ U.S. __ 20 L.Ed.2d 476. Later Esperti said "That don't count toward the $25,000." FARINELLA added "You've got a lot of merchandise out there. Sell it. Get the money."

It is difficult to determine exactly what words or deeds constituted the threat labeled extortion. As interpreted by the government in the present case, attempted

robbery and attempted extortion appear to be indistinguishable!

Although guns were present at the meeting cited above, it is impossible to say what the witnesses could have expected or feared if they did not comply with the demands. The consent required in the definition of extortion under the Hobbs Act was certainly absent here. No attempt was made to indicate to whom a threat was made, that is whether the victim of the extortion was an individual present, all individuals, or the corporation. **U. S. v. Critchley, supra.**

There is no basis for concluding that the mere attempt at extortion charged in the indictment did in fact delay or obstruct commerce. That conclusion appears to be an impossibility of fact, if not of law. The defect arises from the careless language in the indictment reversing the order of the words of the statute so as to destroy any semblance of logic.

The indictment, for instance, talks about "efforts" being induced by force, rather than "payment" being induced.

The indictment alleges consent, but the facts indicate that consent was never requested or given and in fact had to be absent to meet the requirements of robbery.

The Hobbs Act condemns an attempt to delay commerce by robbery or extortion. In the indictment, the words are transposed to include attempted extortion, without regard to the fact that attempted extortion could not result in a completed obstruction of commerce.

This is so not only because the act in itself must be incomplete to constitute an attempt, but also because any threat would relate to events to occur in the future and could not have a present effect on commerce.

The Court, therefore, erred when it charged the jury that the natural effect of finding extortion, or attempted extortion, would be to find an effect on interstate commerce (T. 1067).

The Court also erred when it charged the jury that if the Government had established an attempted extortion, the extortion would have obstructed, delayed or affected commerce in some way had it been successful. This charge amounts to sheer speculation.

In order to meet the charges of robbery and attempted extortion alleged in the indictment, the Government resorted to hearsay testimony. Since the conspiracy charge was dismissed, such testimony severely prejudiced Defendants DARA and FARINELLA, in that the bulk of the testimony did not relate to the charges against these defendants and occurred after the conclusion of the events alleged. Throughout the trial statements of persons not made in furtherance of a conspiracy or in the presence of the defendants were admitted, depriving defendants of a fair trial as well as the right of confrontation when those persons were also co-defendants.

The vast bulk of the record concerns subsequent events involved in a conspiracy charge of which Petitioners were acquitted.

It would appear that the technic of the government in multi-defendant conspiracy cases, of failing to prove the existence of a conspiracy prior to using the hearsay exception permitted in conspiracy cases, limits or deprives an individual of the fair trial constitutionally guaranteed. It is respectfully suggested that the inclusion of masses of testimony creates an emotional reaction which must spill over in the jury's mind to that minor phase of the testimony which concerns the substantive counts.

It is impossible to say whether there would have been a conviction on Counts II and III if the testimony had been limited to these counts. This problem would be avoided if the government were required to prove the existence of the conspiracy first, before the bulk of hearsay testimony is permitted. The jury must find the existence of a conspiracy before determining the extent of the conspiracy. The government should be barred from bringing in the second phase of a conspiracy charge until its existence is first proved.

CONCLUSION

The decision of the Fifth Circuit conflicted with decisions in other circuits concerning elements required to be proved. The appellate court sanctioned a departure from existing evidentiary procedure by admitting hearsay testimony not in furtherance of a conspiracy, and in charging the jury.

It is respectfully submitted that the questions raised by Petitioners are important questions of federal law and the Hobbs Act, and should be settled by this Court.

Petitioners, therefore, respectfully urge this Court to grant Petition for Writ of Certiorari.

MILTON E. GRUSMARK and
NATALIE BASKIN
Attorneys for Petitioners
1674 Meridian Avenue
Miami Beach, Florida 33139

By _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Writ of Certiorari was mailed to William G. Earle, Department of Justice, Criminal Division, Post Office Box 1070, Miami, Florida 33101 and Fred M. Vinson, Jr., Assistant Attorney General, Criminal Division, this ____ day of March, 1969.

APPENDIX

APPENDIX

APPENDIX A

COUNT II

1. That on or about September 13, 1966, in the Southern District of Florida, Anthony Esperti, Sam Nick Farinella, and William Joseph Dara, the Defendants herein, did unlawfully and wilfully, obstruct, delay and affect commerce as defined in Section 1951, Title 18, United States Code, and the movements of articles and commodities in commerce, by robbery, in that the Defendants named herein did obtain from John Edward Maloney and the Red Ball Merchandising Corporation, against their will, property of the said John Edward Maloney and the Red Ball Merchandising Corporation, in the form of money, amounting to $2,000, in currency, payment of which was obtained by means of immediate actual and threatened force, violence and fear of injury.

2. At all times pertinent thereto, the Red Ball Merchandising Corporation was engaged in the general merchandising business in the city of Hialeah, Florida; that in connection with such business the said Red Ball Merchandising Corporation provided supplies, articles and commodities to manufacturers, dealers and suppliers in various states other than the state of Florida which moved in interstate commerce between Red Ball Merchandising Corporation in Hialeah, Florida to the said manufacturers, dealers and suppliers outside of the state of Florida; and furthermore received supplies, articles and commodities from manufacturers, dealers and suppliers in various states other than the state of Florida, which moved in interstate commerce from the said manufacturers, dealers and suppliers; all of the above in violation of Title 18, United States Code 1951.

COUNT III

1. That on or about September 13, 1966, in the Southern District of Florida, Anthony Esperti, Sam Nick Farinella, and William Joseph Dara, the Defendants herein, did unlawfully and wilfully obstruct, delay and affect commerce as defined in Section 1951, Title 18, United States Code, and the movement of articles and commodities in commerce, by extortion, in that the Defendants named herein did attempt to obtain from John Edward Maloney and the Red Ball Merchandising Corporation, with their consent as such, property of the said John Edward Maloney and the Red Ball Merchandising Corporation, in the form of money, in the amount of $25,000, efforts to obtain payment being induced by the wrongful use of actual and threatened force, violence and fear.

2. At all times pertinent thereto, the Red Ball Merchandising Corporation was engaged in the general merchandising business in the city of Hialeah, Florida; that in connection with such business the said Red Ball Merchandising Corporation provided supplies, articles and commodities to manufacturers, dealers and suppliers in various states other than the State of Florida which moved in interstate commerce between Red Ball Merchandising Corporation in Hialeah, Florida to the said manufacturers, dealers and suppliers outside of the state of Florida; and furthermore received supplies, articles and commodities from manufacturers, dealers and suppliers in various states other than the state of Florida, which moved in interstate commerce from the said manufacturers, dealers and suppliers; all of the above in violation of Title 18, United States Code.

APPENDIX B

(Style and Number Omitted) (Filed August 16, 1967)
R. 1240

JUDGMENT AND COMMITMENT AS TO SAM NICK FARINELLA

On this 16th day of August, 1967, came the attorney for the government and the defendant appeared in person and by counsel, Steadman Stahl, Esq.

IT IS ADJUDGED that the defendant upon his plea of Not Guilty and a Jury Verdict of Guilty has been convicted of the offense of interference with commerce by threats or violence, in violation of Title 18, United States Code, Section 1951, as charged in Counts 2 and 3 of the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TEN (10) YEARS as to Count 2, or until otherwise discharged by due process of law, and TEN (10) YEARS as to Count 3, or until otherwise discharged by due process of law, it being further

ORDERED that sentence imposed as to Count 3 shall run concurrently with sentence hereinabove imposed as to Count 2.

/s/ W. O. MEHRTENS

UNITED STATES DISTRICT JUDGE

* * *

(Style and Number Omitted) (Filed August 16, 1967)
R. 1241

JUDGMENT AND COMMITMENT AS TO WILLIAM JOSEPH DARA

On this 16th day of August, 1967 came the attorney for the government and the defendant appeared in person and by counsel, Steadman Stahl, Esq.

IT IS ADJUDGED that the defendant upon his plea of Not Guilty and a Jury Verdict of Guilty has been convicted of the offense of interference with commerce by threats or violence, in violation of Title 18, United States Code, Section 1951, as charged in Counts 2 and 3 of the Indictment and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of SEVEN AND ONE-HALF YEARS (7-½) as to Count 2, or until otherwise discharged by due process of law, and SEVEN AND ONE-HALF (7-½) YEARS as to Count 3, or until otherwise discharged by due process of law, it being further

ORDERED that sentence imposed as to Count 3 shall run concurrently with sentence hereinabove imposed as to Count 2.

/s/ W. O. MEHRTENS
UNITED STATES DISTRICT COURT

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 25194

ANTHONY ESPERTI,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

No. 25233

SAM NICK FARINELLA,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

No. 25234

WILLIAM JOSEPH DARA,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeals from the United States District Court for the Southern District of Florida

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(January 13, 1969)

Before BELL and MORGAN, Circuit Judges and GUINN, District Judge.

GUINN, District Judge: Defendants Dara, Farinella and Esperti appeal from conviction on two counts of violation of the Hobbs Act, 18 U.S.C. Sec. 1591[1] the first anti-racketeering statute passed by Congress. Dara received concurrent seven and one-half years on each count. Farinella and Esperti each received concurrent ten year sentences.

On appeal the facts must be considered most favorably to the Government to support the verdicts. *Glasser v. United States*, 315 U.S. 60 (1942).

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[1]§1951. Interference with commerce by threats or violence

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section—

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family, or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

John Maloney and Joseph Yeager were fifty percent profit-sharing partners in the Red Ball Merchandising Corporation in Hialeah, Florida. Red Ball sold close-out merchandise. Its interstate sales and purchases amounted to ninety percent of its business.

On September 13, 1966, at 4:00 P.M., Maloney was in his office at Red Ball preparing a deposit slip for a $2000 cash bank deposit received via Western Union for a sale to a Chicago customer. The cash was in $100 bills. Maloney left his office and entered Yeager's office where he saw, for the first time in his life, the three appellants. Esperti and Farinella each had guns. Yeager and an employee, William Waldorf, were also in Yeager's office. Esperti's gun was pointed at Yeager and Farinella's at Waldorf.

Esperti grabbed Maloney, threw him on the couch and told him that, "We're here to get the other $25,000.00 for the man in New York." Esperti put the gun alternatively against Maloney's and Yeager's heads and demanded the $25,000 immediately. Meanwhile Dara left the room and reentered with the deposit slip and the $2000 Maloney had been preparing to put in the bank. He said, "Look what I found" and Esperti took it from him adding, "That don't count toward the $25,000." Farinella added, "You've got a lot of merchandise out there. Sell it. Get the money." They left with the $2000. Yeager kept inquiring to whom Red Ball owed the money. This angered Esperti and he hit Yeager.

Two months later Dara and Maloney met at the Shalimar Restaurant and Dara said that he had received

a call from New York City to collect some money from Yeager. Defense counsel were unable to establish that Maloney or Red Ball or Yeager owed any individual any sum of money.

Defendants were acquitted of Count I, a conspiracy charge. They were also acquitted of two remaining substantive counts concerning events of the following day which are not pertinent here.

The first question presented is the sufficiency of the indictment. The indictment satisfies the requirements of Rule 7(c) of the Federal Rules of Criminal Procedure. It is drafted substantially in the words of 18 U.S.C. Section 1951. See *United States v. Green*, 350 U.S. 415 (1956); *United States v. Debrow*, 346 U.S. 374 (1953); *Turf Center v. United States*, 325 F.2d 793 (9th Cir. 1963).

The next question presented is the sufficiency of the evidence to show that the Defendants robbed Red Ball Merchandising Corporation of $2000 as defined in the Hobbs Act. The evidence is sufficient and establishes that $2000 was taken unlawfully from the Red Ball personnel against their will by means of the threatened force of the guns brandished by Farinella and Esperti. It is clear that the taking of $2000 from a business engaged in interstate commerce would obstruct, delay or affect commerce. *United States v. Provenzano*, 3 Cir. 1964, 334 F.2d 678, 692, cert. denied, 379 U.S. 947 (1964); *United States v. Tolub*, 2 Cir. 1962, 309 F.2d 286, 288; *United States v. Kramer*, 7 Cir. 1966, 355 F.2d 891, 898.

The next contention made by the Defendants is that the attempted extortion and consummated robbery did not obstruct, delay or affect commerce. This contention is without merit. Once the robbery and attempted extortion of Maloney and Red Ball was established, it was not necessary to show that any particular shipment of merchandise moving to and from Red Ball was obstructed or delayed. It is a depletion of the resources of the business which permits the reasonable inference that its operations are obstructed or delayed. *United States v. Provenzano*, Supra.

The Defendants also contend that the witness Maloney should have not been permitted to refresh his recollection with a copy of a statement given by him to an agent of the FBI. It is hornbook law that any writing may be used to refresh the recollection of a witness. See Wigmore, *Evidence* §758. This is true even where the document itself would be inadmissible as evidence. *Williams v. United States*, 7 Cir., 1966, 365 F.2d 21. Caution must be exercised to insure that the document is actually being used for purposes of refreshing and not for purposes of putting words in the mouth of the witness. Such, however, is within the discretion of the trial judge. *Williams*, supra. There was no abuse of this discretion here.

Defendants also object to the trial court's failure to grant motions for severance and the allowance into evidence of certain hearsay testimony. Both these objections relate to alleged bribery and obstruction of justice issues which may not have been equally applicable to all defendants. Defendant Esperti contends that the refusal to sever and the allowance of the hearsay were particularly harmful to him. Esperti, however, joined in a motion to open

up this entire area over the objection of the government and the advice of the court, and he cannot now be heard to complain of prejudice resulting therefrom.

We have examined the defendants' objections to the court's jury charges including those on reasonable doubt and substantial evidence and the court's refusal to admit into evidence the actual tapes of the alleged bribe attempts, and we find them all without merit.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1968

No. 25233

D. C. Docket No. 67-1-CR-WM

SAM NICK FARINELLA,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Southern District of Florida

---

Before BELL and MORGAN, Circuit Judges, and GUINN, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

January 13, 1968

Issued as Mandate:

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

October Term, 1968

No. 25234

D. C. Docket No. 67-1-CR-WM

WILLIAM JOSEPH DARA,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Southern District of Florida

---

Before BELL and MORGAN, Circuit Judges, and GUINN, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

January 13, 1968

Issued as Mandate:

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 25,233 and 25,234

SAM NICK FARINELLA and WILLIAM JOSEPH DARA,

Appellants,

versus

UNITED STATES OF AMERICA,

Appellee.

Petition for Rehearing of Appeal from the United States District Court for the Southern District of Florida

---

COMES NOW the Appellants, SAM NICK FARINELLA and WILLIAM JOSEPH DARA by their undersigned attorneys and file this Petition for Rehearing and as grounds for such Petition, say:

1. The Court overlooked and failed to consider the total absence of any evidence indicating interference with interstate commerce. The mere existence of interstate transactions by a corporation does not prove that anything done relating to that corporation interfered with interstate commerce. The positive evidence discloses the contrary.

2. The Court overlooked and failed to consider the fact that the importance of the $2,000 items required the granting of Appellants' full right to cross-examination of witnesses concerning that $2,000. That right was infringed upon and limited by the Court yet the option of January 13, 1969, of this Honorable Court reflects the importance of the testimony concerning the $2,000.

3. The Court failed to consider the fact that the finding of not guilty on the conspiracy charge required a finding of not guilty of the substantive count. The Court further overlooked and failed to consider that the absence of any evidence supporting the conspiracy count as to these Appellants rendered the admission of testimony concerning that count prejudicial to the rights of Appellants to a calm, unemotional consideration of the facts concerning the charges upon which the guilty judgment was entered. The bulk of the record concerned the conspiracy charge upon which the Defendants were acquitted. The Court overlooked and failed to consider the fact that if the government had been required to prove the existence of a conspiracy before introducing the prejudicial testimony not related to the creation of the conspiracy itself, fair trial could have been afforded Appellants. Under the circumstances, however, prejudice necessarily resulted.

For the foregoing reasons Appellants respectfully request reconsideration and rehearing of these proceedings.

MILTON E. GRUSMARK and
NATALIE BASKIN
Attorneys for Appellants
1674 Meridian Avenue
Miami Beach, Florida 33139

By_____
MILTON E. GRUSMARK

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Rehearing was mailed to WILLIAM G. EARLE, c/o U.S. ATTORNEY, Department of Justice, Criminal Division, Post Office Box 1070, Miami, Florida 33101, Attorney for Appellee, on this — day of January, 1969.

_____
MILTON E. GRUSMARK

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 25233 and 25234

SAM NICK FARINELLA and
WILLIAM JOSEPH DARA,

Appellants,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeals from the United States District Court for the Southern District of Florida

---

ON PETITION FOR REHEARING
(February 6, 1969)

Before BELL and MORGAN, Circuit Judges, and GUINN, District Judge.

PER CURIAM:

The Petition for Rehearing is DENIED.

APPENDIX F

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

Office of the Clerk
February 14, 1969

EDWARD W. WADSWORTH
Clerk

Room 408-400 Royal St.
New Orleans, LA. 70130
Tel. No. 527-6514

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

Re: NO. 25233 & 25234—
Sam Nick Farinella and William Joseph Dara
vs. U. S.

Gentlemen:

The following action has this day been taken in the above case:

(X) An extension of time has been granted to and including March 8, 1969
- ( ) for filing and docketing record on appeal.
- ( ) for payment of Court costs.
- ( ) for withdrawing record for printing.
- ( ) for filing appellant's printing designation.
- ( ) for filing appellee's printing designation.
- ( ) for filing reproduced copies of the record.
- ( ) for filing appellant's brief.
- ( ) for filing appellee's brief.
- ( ) for filing a petition for rehearing.

( ) The Court's opinion has this day been rendered and a copy thereof is enclosed.

( ) Joint Motion as to time for filing briefs granted.

( ) Order enclosed has been entered.

(X) Motion for Stay of Mandate has this day been granted to and including March 8, 1969.

Very truly yours,
EDWARD W. WADSWORTH,
Clerk

By G. E. WINDHORST, JR.
Deputy Clerk

REWJr:bc
cc: Mr. Steadman S. Stahl
Mr. William G. Earle
Milton S. Grusmark, Esq.

In the Supreme Court of the United States

OCTOBER TERM, 196[illegible]

No. 1126

SAM NICK FARINELLA and WILLIAM JOSEPH DARA,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. C) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on January 13, 1969. A petition for rehearing was denied on February 6, 1969. The petition for a writ of certiorari was filed on March 7, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether the evidence was sufficient to support petitioners' convictions for robbery and attempted extortion in violation of the Hobbs Act.

STATEMENT

After a jury trial in the United States District Court for the Southern District of Florida, petitioners together with one Esperti were convicted on two counts charging robbery and attempted extortion in violation of the Hobbs Act, 18 U.S.C. 1951 (Pet. App. A 1-2, Pet. App. B-1, B-2; the statute is set forth at Pet. 3-5).[1] Petitioner Farinella was sentenced to concurrent terms of ten years' imprisonment. Petitioner Dara was sentenced to concurrent prison terms of seven-and-one-half years. The court of appeals affirmed (Pet. App. C).

The evidence showed that Jack Maloney and Joe Yeager had a profit-sharing interest in Red Ball Merchandising Corporation, a Hialeah, Florida business dealing in the marketing of close-out merchandise. Approximately ninety percent of Red Ball's customers and suppliers were from other states (Tr. 182-186).[2]

---

[1] Petitioners were acquitted on two counts charging extortionate conduct on September 14, 1966. The jury also acquitted them on a conspiracy count, in which they were named with Esperti and two other co-defendants.

[2] "Tr." refers to the transcript of proceedings at trial, a copy of which is on file with the Clerk of this Court.

On September 13, 1966, Maloney was in his office preparing a bank deposit slip for a $2000 cash deposit received on a sale by Red Ball to a Chicago customer (Tr. 186-189). He walked into Yeager's office and there saw petitioners and Esperti. Yeager and an employee of Red Ball named Waldorf were also in the office. Esperti threw Maloney on a couch and told him that they were "here to get the other $25,000 for the man in New York" (Tr. 190-193). Esperti and Farinella both brandished guns. Esperti put his gun alternatively to the heads of Maloney and Yeager and repeatedly demanded immediate payment of the $25,000 (Tr. 193). Petitioner Dara, who had left the room, then returned with the $2000 cash and deposit slip from Maloney's office, remarking "Look what I found". Esperti took it from him, adding "This don't count toward the $25,000" (Tr. 120-122, 194-195). Petitioner Farinella stated: "You've got a lot of merchandise out there. Sell it. Get the money" (Tr. 123, 196). Petitioners and Esperti then departed with the $2000.

ARGUMENT

Petitioners contend (Pet. 10, 14) that there was no evidence to support a finding either that they intended to steal the $2000 or that they relied on fear or threats of force. The contention is frivolous. The money belonged to Red Ball; as the court of appeals held, it was taken, with petitioners' knowledge and participation, "from the Red Ball personnel against their will by means of the threatened force of the guns brandished by Farinella and Esperti" (Pet. App.

C, 4). This amounted to "robbery" as defined by the statute.[3]

Petitioners also contend that the proof was insufficient to show that interstate commerce was affected by the robbery and attempted extortion. See *Stirone* v. *United States*, 361 U.S. 212. As the court of appeals held, however (Pet. App. C, 5), "it was not necessary to show that any particular shipment of merchandise moving to and from Red Ball was obstructed or delayed". The depletion of Red Ball's resources caused by the robbery permitted the inference that its operations (ninety percent of which were with out-of-state suppliers and buyers) were thereafter obstructed or delayed. *United States* v. *Provenzano*, 334 F. 2d 678, 692-693 (C.A. 3), certiorari denied, 379 U.S. 947.

The same answer may be given to petitioner's contention that attempted extortion cannot be a violation of the Hobbs Act because "any threat would relate to events to occur in the future and could not have a present effect on commerce" (Pet. 15). Under the statute, Congress indicated its intent to punish both specified criminal acts which affect commerce and attempts to commit such acts which if successfully completed would affect commerce. *E.g. United States*

---

[3] The argument (Pet. 13) that Esperti's statements were improperly received in evidence against petitioner Dara under *Bruton* v. *United States*, 391 U.S. 123, is without basis. Bruton concerned the admission into evidence at a joint trial of the confession of one defendant implicating a co-defendant. Esperti's statements were not admissions or confessions but were verbal acts constituting elements of the joint crime. *Warszower* v. *United States*, 312 U.S. 342, 347-348; compare *Opper* v. *United States*, 348 U.S. 84.

v. *Pranno*, 385 F. 2d 387, 389-390 (C.A. 7), certiorari denied, 390 U.S. 944; see also *United States* v. *Kramer*, 355 F. 2d 891, 897 (C.A. 7), partially vacated and remanded on other grounds, 384 U.S. 100. Here the evidence clearly supported the conclusion that commerce would have been affected had Red Ball's merchandise been sold, as petitioner Farinella directed, to raise the $25,000 demanded.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

WILL WILSON,
Assistant Attorney General.

JEROME M. FEIT,
ROGER A. PAULEY,
Attorneys.

APRIL 1969.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1969 338702 597

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in the

Supreme Court

of the

United States

OCTOBER TERM, 1968

No. 1126

SAM NICK FARINELLA and
WILLIAM JOSEPH DARA,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

REPLY BRIEF OF PETITIONERS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ARGUMENT

Federal jurisdiction under the Hobbs Act requires obstruction or delay of interstate commerce. The incidents of alleged robbery and extortion do not qualify as grounds for federal jurisdiction under the Hobbs Act in

the case at bar. No obstruction of interstate commerce occurred or could have occurred because all interstate commerce transactions had been completed at the time of the alleged offenses.

Testimony at trial (TR 243) discloses that out-of-state sales by Red Ball were made only to M & E Sales in Chicago, Illinois, and to Merchandise Brokers in Elizabeth, New Jersey. (TR 242). Obstruction of interstate commerce would necessarily have to be proved, therefore, in prevention of sales with either of those merchants.

No interference with shipments to Merchandise Brokers occurred, however, nor were any transactions altered. (TR 251). The last shipment was made to M & E Sales a week before the incidents alleged (TR 255, 256), and payment was received the day of the events charged. All subsequent sales were local.

Contrary to Respondent's contention, therefore (Brief for United States in Opposition, Page 4) no inference of obstruction or delay of operations with out-of-state buyers "thereafter" was permissible to confer federal jurisdiction. No destructive burden on commerce was shown, as required under existing case law. **Stirone v. United States**, 361 U.S. 212, 80 S.Ct. 270, 4 L.Ed.2d 252 (1960).

In the **Stirone** case, this Court excluded from consideration the prospective shipments as a ground for bringing a transaction within the provisions of the Hobbs Act, because the case was decided on another point. In the case at bar, prospective shipments are not before this Court, because no prospective shipments were contemplated or shown to have been contemplated by Red Ball.

Red Ball did not consent to extortion to alleviate a burden on its interstate commerce transactions, which would bring the Hobbs Act into focus.

In **United States v. Provenzano**, 334 F.2d 678, 692-293 (3rd Cir.), certiorari denied 379 U.S. 947, the court relied on **Stirone** to the effect that the trial jury could find commerce was saved from blockage by the victim's compliance with illegal demands. In **Provenzano**, (p. 693) as in **Stirone**, and **United States v. Kramer**, 355 F.2d 891 897 (7th Cir.), the circumstances were such that commerce was maintained by the illegal payments, unlike the case at bar, in which all interstate commerce transactions had terminated prior to the occurrence of the alleged events. The alleged robbery and extortion by Petitioners DARA and FARINELLA consisted of a single incident relating to a specific sum of money. In order to establish federal grounds, it would be necessary to prove obstruction to interstate commerce by the robbery or extortion of the particular sum, because no continuing transactions in interstate commerce were contemplated or executed.

Since the robbery or extortion alleged could not affect commerce, which had already been concluded, a mere attempt could not affect commerce. Additionally, the nature of the attempt alleged in the charge was not the attempt delineated in the Hobbs Act, as required by the court in **United States v. Pranno**, 385 F.2d 387, 389-390 (7th Cir.). Although it may be possible to infer that depletion of resources of a business results in delay of its operations, there is no basis for any inference that those operations were in interstate commerce; that issue must be proved.

CONCLUSION

For the foregoing reasons as well as those contained in Petition for Writ of Certiorari, it is respectfully submitted that this Court should grant Petition for Writ of Certiorari, and reverse the decisions of the lower courts.

Respectfully submitted,

MILTON E. GRUSMARK and
NATALIE BASKIN
Attorneys for Petitioners
1674 Meridian Avenue
Miami Beach, Florida 33139

By_____
Natalie Baskin

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Reply Brief of Petitioners was mailed to Erwin N. Griswold, Solicitor General, Washington, D. C., Will Wilson, Assistant Attorney General, c/o Department of Justice, Washington, D. C. 20530, William G. Earle, Department of Justice, Criminal Division, Post Office Box 1070, Miami, Florida 33101 and Jerome M. Feit and Roger A. Pauley, Department of Justice, Washington, D. C. 20530, this _____ day of April, 1969.

Natalie Baskin

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

NO. 1126

SAM NICK FARINELLA and
WILLIAM JOSEPH DARA

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MILTON E. GRUSMARK and
NATALIE BASKIN
Attorneys for Petitioners
1674 Meridian Avenue
Miami Beach, Florida

Petitioners DARA and FARINELLA file Petition for Rehearing of Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit and state:

I

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit filed by Petitioners, DARA and FARINELLA was denied by this Court on April 28, 1969.

II

Petition for Writ of Certiorari sought review of the decision of the appellate court affirming adjudication of guilt and sentence of each Petitioner for Hobbs Act violations by robbery and extortion interfering with interstate commerce.

III

Petitioners and others were charged in a five count information, two counts charging robbery and attempted extortion on September 13, 1966, two counts charging robbery and attempted extortion on September 14, 1966, and a fifth count charging conspiracy to obstruct commerce by robbery, and extortion. Upon trial by jury Petitioners were acquitted of the counts charging conspiracy and robbery and extortion on September 14, 1966.

IV

Petition for Writ of Certiorari presented questions negating federal jurisdiction by indicating that under the Hobbs Act, 18 U.S.C. 1951, an effect on interstate commerce must

be shown, but could not be shown where movement in commerce had terminated or jurisdiction was not activated.

V

Petitioners contend in this Petition for Rehearing that they were deprived of a fair trial and deprived of due process of law by the admission of voluminous testimony and confusing exhibits concerning charges of which they were adjudicated innocent.

The transcript of testimony comprises approximately a thousand pages. However, testimony pertaining to the charges resulting in Petitioners' conviction comprises only approximately one hundred pages. In fact, the entire criminal act upon which conviction was based was the statement "Look what I found" and the handing of $2,000.00 to co-defendant Esperti.

Petitioners were particularly prejudiced by the inclusion of exhibits, especially the sum of $2,000.00 in United States currency, since the jury could readily but mistakenly conclude that the money it saw was concrete or tangible evidence of its existence, when in fact the $2,000.00 admitted into evidence dealt with matters at another time and place.

VI

The nature of the joinder of numerous counts against numerous defendants deprived Petitioners of a fair trial with due process of law by confusing the jury and by expanding the alleged crime into a continuing matter existing over a period of days, weeks or months.

VII

The result of the confusion was a verdict of guilty on two charges totally inconsistent with each other and with the evidence.

VIII

The inconsistency is apparent from an examination of definitions under the Hobbs Act. Robbery requires, by definition under the Hobbs Act, an unlawful taking from the person or in the presence of another, against his will. Extortion, however, is defined under the Act as obtaining the property of another with his consent. On the slim testimony pertaining to the charges in this case, not only was the verdict inconsistent, it was also the result of confusion by the jury. Because the sum involved on September 13, 1966, was so similar to the sums involved on September 14, the inconsistent verdict necessarily resulted.

IX

It is respectfully submitted that the Court overlooked or failed to consider the foregoing reasons for granting Petition for Writ of Certiorari. No evidence whatsoever sustained the conviction for extortion of $25,000.00 by Petitioners, obviously a result of confusion by the jury concerning $25,000.00, $2,000.00, $2,500.00, $25,000.00 and $2,000.00 among other sums appearing, reappearing and emphasized both in testimony and evidence on charges of bribery, extortion and robbery of which Petitioners were acquitted.

X

Subsequent to the filing of Petition for Writ of Certioari, co-defendant Esperti filed his Petition for Writ of Certiorari. Petitioners FARINELLA and DARA requested this Court to consider the arguments contained in Petitioner Esperti's Petition on their behalf, but that request was refused by this Court. Petitioners DARA and FARINELLA, on Petition for Rehearing now request that this Court consider the arguments propounded by Petitioner Esperti in their behalf, since those arguments obtain equally to all three Petitioners.

XI

For the foregoing reasons it is respectfully submitted that this Court should grant, on rehearing, Petition for Writ of Certiorari.

MILTON E. GRUSMARK and
NATALIE BASKIN
Attorneys for Petitioners
1674 Meridian Avenue
Miami Beach, Florida

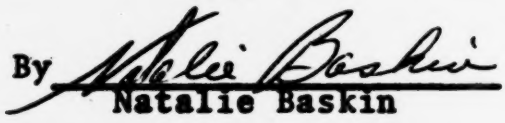
By Natalie Baskin
Natalie Baskin

I HEREBY CERTIFY that a true copy of the foregoing Petition for Rehearing of Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit was mailed to Erwin N. Griswold, Solicitor General, Washington, D.C., Will Wilson, Assistant Attorney General, c/o Department of Justice, Washington, D.C. 20530, William G. Earle, Department of Justice, Criminal Division, Post Office Box 1070, Miami, Florida 33010 and Jerome M. Feit and Roger A. Pauley, Department of Justice, Washington, D.C. 20530, this ____ day of May, 1969.

Natalie Baskin

I HEREBY CERTIFY that the foregoing Petition for Rehearing is presented in good faith and not for delay.

MILTON E. GRUSMARK and
NATALIE BASKIN
Attorneys for Petitioners
1674 Meridian Avenue
Miami Beach, Florida

By 
Natalie Baskin